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UM CORPORATION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UM CORPORATION, a Japanese
corporation,

Plaintiff,

vs.

TSUBURAYA PRODUCTIONS CO.
LTD., a Japanese corporation,

Defendant.

AND RELATED CROSS-CLAIMS

Case No. 2:15-cv-03764-AB(AJWx)

PLAINTIFF AND COUNTER-
DEFENDANT UM
CORPORATION'S ANSWER AND
AFFIRMATIVE DEFENSES TO
TSUBURAYA PRODUCTIONS, CO.,
LTD.'S COUNTERCLAIMS FOR:

(1) COPYRIGHT INFRINGEMENT
(2) DECLARATORY RELIEF

Judge: Hon. Andrew Birotte, Jr.

1 Plaintiff and Counter-Defendant UM Corporation (“UMC”), by and
2 through its undersigned counsel, hereby answers the Counterclaims of
3 Defendant and Counter-Claimant Tsuburaya Productions Co., Ltd.
4 (“Defendant”). UMC denies all factual allegations set forth in the
5 Counterclaims unless expressly admitted. Any admission herein is limited to
6 the express language of the response and shall not be deemed an implied
7 admission of additional facts. To the extent paragraphs in the Counterclaims
8 are grouped under headings, these headings contain legal conclusions to which
9 no response is required, and which have not been reproduced herein; UMC
10 denies each and every allegation made or implied by such headings.

11 **NATURE OF THE ACTION**

12 1. UMC denies the allegations of paragraph 1.
13 2. Answering the allegations of paragraph 2, UMC admits that the
14 works listed in the 1976 Agreement between Noboru Tsuburaya and Sompote
15 are subject to copyright protection in the United States. Otherwise, UMC
16 lacks knowledge or information sufficient to form a belief as to the truth or
17 accuracy of the remaining allegations in paragraph 2 and on this basis denies
18 them.

19 3. UMC denies the allegations of paragraph 3.
20 4. UMC denies the allegations of paragraph 4.

21 **THE PARTIES**

22 5. UMC admits the allegations of paragraph 5.
23 6. UMC admits the allegations of paragraph 6.
24 7. UMC lacks knowledge or information sufficient to form a belief
25 as to the truth or accuracy of the allegations in paragraph 7 and on this basis
26 denies them.
27 8. UMC denies the allegations of paragraph 8.
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1 9. UMC admits the allegations of paragraph 9.

2 10. UMC admits the allegations of paragraph 10.

3 11. UMC lacks knowledge or information sufficient to form a belief
4 as to the truth or accuracy of the allegations in paragraph 11 and on this basis
5 denies them.

6 12. UMC denies the allegations of paragraph 12.

7 **JURISDICTION AND VENUE**

8 13. Answering the allegations of paragraph 13, UMC admits that this
9 Court has subject matter jurisdiction over the Copyright Act claims in this
10 Action pursuant to 28 U.S.C. §§ 1331 and 1338, and denies the truth of the
11 remaining allegations set forth in paragraph 13.

12 14. Answering the allegations of paragraph 14, UMC admits that this
13 Court has personal jurisdiction over UMC only. UMC lacks knowledge or
14 information sufficient to form a belief as to the truth or accuracy of the
15 remaining allegations in paragraph 14 and on this basis denies them.

16 15. Answering the allegations of paragraph 15, UMC admits only for
17 the purposes of this action that venue is proper in this district, and denies the
18 truth of the remaining allegations set forth in paragraph 15.

19 **FACTUAL ALLEGATIONS**

20 **Tsuburaya and the Ultraman Library**

21 16. UMC lacks knowledge or information sufficient to form a belief
22 as to the truth or accuracy of the allegations in paragraph 16 and on this basis
23 denies them.

24 17. Answering the allegations of paragraph 17, UMC admits that
25 *Ultra Q* is a 28-episode television series that originally aired in Japan from
26 January 2, 1966 to July 3, 1966. UMC lacks knowledge or information
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1 sufficient to form a belief as to the truth or accuracy of the other allegations in
2 paragraph 17 and on this basis denies them.

3 18. Answering the allegations of paragraph 18, UMC admits that
4 *Ultraman* is a 39-episode television series that originally aired in Japan from
5 July 17, 1966 to April 9, 1967. UMC lacks knowledge or information
6 sufficient to form a belief as to the truth or accuracy of the other allegations in
7 paragraph 18 and on this basis denies them.

8 19. Answering the allegations of paragraph 19, UMC admits that the
9 television series *Ultraman* was the first television series to feature the
10 character “Ultraman.” UMC lacks knowledge or information sufficient to
11 form a belief as to the truth or accuracy of the remaining allegations in
12 paragraph 19 and on this basis denies them.

13 20. Answering the allegations of paragraph 20, UMC lacks
14 knowledge or information sufficient to form a belief as to the accuracy or
15 authenticity of the image depicted in paragraph 20. UMC lacks knowledge or
16 information sufficient to form a belief as to the truth or accuracy of the
17 remaining allegations in paragraph 20 and on this basis denies them.

18 21. Answering the allegations of paragraph 21, UMC admits that
19 *Ultra Seven* is a 49-episode television series that originally aired in Japan from
20 October 1, 1967 to September 8, 1968. UMC lacks knowledge or information
21 sufficient to form a belief as to the truth or accuracy of the remaining
22 allegations in paragraph 21 and on this basis denies them.

23 22. Answering the allegations of paragraph 22, UMC lacks
24 knowledge or information sufficient to form a belief as to the accuracy or
25 authenticity of the image depicted in paragraph 22. UMC lacks knowledge or
26 information sufficient to form a belief as to the truth or accuracy of the
27 remaining allegations in paragraph 22 and on this basis denies them.
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1 23. Answering the allegations of paragraph 23, UMC admits that *The*
2 *Return of Ultraman* is a 54-episode television series that originally aired in
3 Japan from April 2, 1971 to March 31, 1972. UMC lacks knowledge or
4 information sufficient to form a belief as to the accuracy or authenticity of the
5 image depicted in paragraph 23. UMC lacks knowledge or information
6 sufficient to form a belief as to the truth or accuracy of the remaining
7 allegations in paragraph 23 and on this basis denies them.

8 24. Answering the allegations of paragraph 24, UMC admits that
9 *Ultraman Ace* is a 52-episode television series that originally aired in Japan
10 from April 7, 1972 to March 30, 1973. UMC lacks knowledge or information
11 sufficient to form a belief as to the accuracy or authenticity of the image
12 depicted in paragraph 24. UMC lacks knowledge or information sufficient to
13 form a belief as to the truth or accuracy of the remaining allegations in
14 paragraph 24 and on this basis denies them.

15 25. Answering the allegations of paragraph 25, UMC admits that
16 *Ultraman Taro* is a 53-episode television series that originally aired in Japan
17 from April 6, 1973 to April 5, 1974. UMC lacks knowledge or information
18 sufficient to form a belief as to the accuracy or authenticity of the image
19 depicted in paragraph 25. UMC lacks knowledge or information sufficient to
20 form a belief as to the truth or accuracy of the remaining allegations in
21 paragraph 25 and on this basis denies them.

22 26. Answering the allegations of paragraph 26, UMC admits that
23 *Jumborg Ace* is a 50-episode television series that originally aired in Japan
24 from January 17, 1973 to December 29, 1973. UMC lacks knowledge or
25 information sufficient to form a belief as to the accuracy or authenticity of the
26 image depicted in paragraph 26. UMC lacks knowledge or information
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1 sufficient to form a belief as to the truth or accuracy of the remaining
2 allegations in paragraph 26 and on this basis denies them.

3 27. UMC lacks knowledge or information sufficient to form a belief
4 as to the truth or accuracy of the allegations in paragraph 27 and on this basis
5 denies them.

6 28. UMC lacks knowledge or information sufficient to form a belief
7 as to the truth or accuracy of the allegations in paragraph 28 and on this basis
8 denies them.

9 29. Answering the allegations of paragraph 29, UMC denies that TPC
10 has Copyright registrations in the following motion pictures: *Ultra Q*,
11 *Ultraman*, *Ultra Seven*, *The Return of Ultraman*, *Ultraman Ace*, *Ultraman*
12 *Taro*, and *Jumborg Ace*. UMC lacks knowledge or information sufficient to
13 form a belief as to the truth or accuracy of the remaining allegations in
14 paragraph 29 and on this basis denies them.

15 **Counterdefendants' Infringement of the Ultraman Works**

16 30. UMC lacks knowledge or information sufficient to form a belief
17 as to the truth or accuracy of the other allegations in paragraph 30 and on this
18 basis denies them.

19 31. UMC lacks knowledge or information sufficient to form a belief
20 as to the truth or accuracy of the other allegations in paragraph 31 and on this
21 basis denies them.

22 32. UMC denies the allegations of paragraph 32.

23 33. Answering the allegations of paragraph 33, UMC admits that, in
24 2008, the Supreme Court of Thailand ruled on certain claims of infringement
25 brought by Sompote. UMC lacks knowledge or information sufficient to form
26 a belief as to the truth or accuracy of the remaining allegations in paragraph 33
27 and on this basis denies them.

1 34. UMC lacks knowledge or information sufficient to form a belief
2 as to the truth or accuracy of the allegations in paragraph 34 and on this basis
3 denies them.

4 35. UMC denies the allegations of paragraph 35.

5 36. Answering the allegations of paragraph 36, UMC admits that in
6 2007, Mr. Sompote transferred his rights under the 1976 Agreement to Mr.
7 Perasit Saengduenchai. UMC denies the remaining allegations of paragraph
8 36.

9 37. UMC denies the allegations of paragraph 37.

10 38. UMC denies the allegations of paragraph 38.

11 39. Answering the allegations of paragraph 39, UMC admits that it
12 has entered into licensing agreements with TIGA, who thereafter entered into
13 licensing agreements with GMG, for the exploitation of certain Ultraman
14 motion pictures. Otherwise, UMC denies the remaining allegations of
15 paragraph 39.

16 40. Answering the allegations of paragraph 40, UMC admits that its
17 licensee Veranda attempted to upload certain Ultraman videos to YouTube in
18 2013. UMC further admits that Mr. Kei Minamitani, thereafter contacted Mr.
19 Randall Green. UMC otherwise denies the remaining allegations of paragraph
20 40.

21 41. UMC lacks knowledge or information sufficient to form a belief
22 as to the truth or accuracy of the allegations in paragraph 41 and on this basis
23 denies them.

24 42. UMC lacks knowledge or information sufficient to form a belief
25 as to the truth or accuracy of the allegations in paragraph 42 and on this basis
26 denies them.

27 43. UMC denies the allegations of paragraph 43.

1 44. UMC denies the allegations of paragraph 44.

2 45. UMC denies the allegations of paragraph 45.

3 **FIRST COUNTERCLAIM FOR RELIEF**

4 (Copyright Infringement against all Counterdefendants)

5 (17 U.S.C. §§ 106 *et seq.* and 501)

6 46. Paragraph 46 does not contain any allegations of fact to which an
7 answer is required. UMC denies that Defendant is entitled to any relief
8 against UMC under 17 U.S.C. §§ 106 *et seq.* and 501.

9 47. Answering the allegations of paragraph 47, UMC admits that the
10 works listed in the 1976 Agreement constitute copyrightable subject matter
11 under the Copyright Act, 17 U.S.C. § 101 *et seq.* UMC specifically denies
12 that Defendant has any rights in any of the works listed in the 1976 Agreement
13 outside of Japan. UMC otherwise lacks knowledge or information sufficient
14 to form a belief as to the truth or accuracy of the remaining allegations in
15 paragraph 47 and on this basis denies them.

16 48. UMC denies the allegations in paragraph 48.

17 49. UMC denies the allegations in paragraph 49.

18 50. UMC denies the allegations in paragraph 50.

19 **SECOND COUNTERCLAIM FOR RELIEF**

20 (Declaratory Relief against all Counterdefendants)

21 51. Paragraph 51 of the Counterclaims does not contain any
22 allegations of fact to which an answer is required. UMC denies that
23 Defendant is entitled to any relief against UMC.

24 52. UMC admits the allegations of paragraph 52.

25 53. UMC lacks knowledge or information sufficient to form a belief
26 as to the truth or accuracy of the remaining allegations in paragraph 53 and on
27 this basis denies them.

1 54. Paragraph 54 does not contain any allegations of fact to which an
2 answer is required. UMC denies that Defendant is entitled to any relief
3 against UMC.

4 **PRAYER FOR RELIEF**

5 UMC denies that Defendant is entitled to any judgment in its favor
6 and/or any of the relief requested in Defendant's Prayer for Relief.

7 **AFFIRMATIVE DEFENSES**

8 Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, UMC
9 further pleads the following separate and additional defenses. By pleading
10 these defenses, UMC does not in any way agree or concede that it has the
11 burden of proof or persuasion on any of these issues. UMC reserves the right
12 to assert such additional affirmative defenses as discovery indicates are proper.
13 For its affirmative defenses, UMC alleges on information and belief that:

14 **FIRST AFFIRMATIVE DEFENSE**

15 Defendant's counterclaims fail to state a claim upon which relief can be
16 granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 Defendant has no valid, enforceable or protectable rights or interest in
19 some or all of the alleged copyrights or other matters asserted.

20 **THIRD AFFIRMATIVE DEFENSE**

21 Defendant's counterclaims are barred in whole or in part by Defendant's
22 unclean hands.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 Defendant has not been damaged in any amount or manner because of
25 any act alleged against UMC in the counterclaims, and, therefore, the relief
26 prayed for in the counterclaims cannot be granted.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 Defendant's counterclaims are barred on the grounds of legal
3 justification or excuse.

4 **SIXTH AFFIRMATIVE DEFENSE**

5 Defendant's counterclaims are barred in whole or in part by the
6 applicable statutes of limitations.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 Defendant's claims are barred in whole or in part by the doctrine of
9 laches.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 Defendant's counterclaims are barred in whole or in part by the
12 doctrines of waiver, estoppel, acquiescence or abandonment.

13 **NINTH AFFIRMATIVE DEFENSE**

14 Defendant's counterclaims are barred in whole or in part by the
15 doctrines of collateral estoppel, adjudicatory comity, and/or *res judicata*.

16 **TENTH AFFIRMATIVE DEFENSE**

17 To the extent Defendant's counterclaims seek reliefs for alleged
18 extraterritorial acts that occurred outside of the United States, Defendant's
19 counterclaims are barred due to lack of subject matter jurisdiction.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 Defendant's claims are barred in whole or in part by the doctrine of
22 illegality and the fact that Defendant's actions violate applicable law.

23
24 **PRAYER FOR RELIEF**

25 WHEREFORE, UMC respectfully requests that this Court:

26 1. Dismiss with prejudice the Counterclaims and the claims for
27 relief contained therein;

- 1 2. Determine and declare that UMC is not liable for Copyright
- 2 Infringement;
- 3 3. Determine and declare that UMC is the rightful holder of all
- 4 rights granted under the 1976 Agreement;
- 5 4. Award UMC its reasonable attorneys' fees incurred in this action;
- 6 5. Award UMC costs incurred in this action; and
- 7 6. Grant such other and further relief as the Court deems just proper.
- 8

9 Dated: October 16, 2015.

10 PILLSBURY WINTHROP SHAW
11 PITTMAN LLP
12 RICHARD H. ZAITLEN
13 JENNIFER A. SEIGLE
14 LAURA A. LEVINE

15 By: _____/s/ Richard H. Zaitlen
16 Richard H. Zaitlen
17 Attorneys for Plaintiff and Counterdefendant
18 UM Corporation
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